

THE
R E P L I E S

OF

THOMAS REEVE, Esq;

AND

CLEMENT WEARG, Esq;

IN THE

HOUSE of LORDS,

The Thirteenth of May, 1723.

In Behalf of

The BILL to inflict Pains and Penalties on the late Bishop
of ROCHESTER,

AGAINST THE

D E F E N C E

Made by the said

Late Bishop and his Counsel



L O N D O N,

Printed by S. BUCKLEY in Amen-Corner, 1723.

[Price One Shilling.]

THE
REPORTS
OF
THOMAS REYNOLDS
AND
CLEMENT WEND
IN THE
HOUSE OF LORDS

The Thirtieth of May, 1723.

In Behalf of

The Bill to amend the Laws and Penalties on the late Bishop
of Rochester,

AGAINST THE

DEFEINCE

Made by the said

late Bishop and his Council.



LONDON

Printed by S. Bouverie in Strand, 1723.

[The One Edition]



Mr. REEVE's REPLY
TO THE
DEFENCE made by the late BISHOP of
ROCHESTER and his COUNSEL.

May it please your Lordships,



I permit me to offer something, by way of Reply to the Arguments that have been made use of, and the Evidence that hath been given, in Behalf of the Bishop of Rochester.

My Lords, I shall not trouble your Lordships with entering far into the Arguments so much insisted on by the other Side, concerning the Power of the Parliament to pass Bills of Attainder.

They have been spoken of by the Counsel of the other Side, as inconsistent with our Constitution; Bills of Pains and Penalties, and Bills of Attainder, have been treated by them, as unknown to our Constitution, unless in a few Instances, which afterwards have been condemned.

And yet they have mentioned the Case of Sir *John Fenwick*, which is a Precedent of a Person attainted without legal Evidence, tho' he were forth-coming and amenable to Justice, and his Attainder remains still unreversed. And as to Bills of Pains and Penalties, they should, before they inveigh'd so much against them, have consider'd, that two such Bills have now already passed your Lordships House; and the Bills against *Counter*, *Bernardi*, and others, and against the late South-Sea Directors, are Precedents of Bills of this Kind.

They have mention'd many Instances, where Persons have been prosecuted according to the known Rules of Law, and the Parliament did not think fit to interpose. And doubtless, my Lords, generally speaking, where Evidence is to be had and to be produced, and the Persons are forth-coming, it is right to proceed according to the known Rules of Law, in the ordinary Courts of Justice.

But where Conspirators are carrying on their Designs with Art, and contriving to shelter themselves from those known Rules of Law; we apprehend, my Lords, the ordinary Prosecutions at Law will be no Argument against the Legislature's making use of their Authority, when the Circumstances of the Case, the Preservation of the Publick Peace, the Safety of the Constitution, require it.

But I beg leave to mention one Instance, in which they are mistaken: They have said, that in the Case of the Regicides (that horrid and detestable Treason!) they were all prosecuted according to the ordinary Course of Law; but if they had look'd into the Acts of Parliament, they would have found, that some of them were punish'd by Bills of Pains and Penalties. The Lord *Monson* and others, who sat as Judges in the pretended High Court of Justice, were reserv'd by two Acts of Parliament that pass'd, to have Pains and Penalties inflicted upon them; and tho' there was Evidence in that Case to have attainted them according to the ordinary Course of Law, the Parliament did proceed to punish them by Pains and Penalties, and they were not try'd according to the ordinary Course of Law.

This I beg Leave to observe to your Lordships, in relation to the Power and Usage of Parliaments, in passing Bills of this Kind.

My Lords, in the next place I beg Leave to take Notice, that the Observations that have been made, and the Evidence that hath been given by them;

as to Facts mention'd in the *Report* and *Appendix*, concerning which we have given no Evidence at all, ought to be laid out of this Case, as foreign to the Matter before your Lordships. The Matters we have given in Evidence, it was proper for them to answer; but they have gone into the *Report* and *Appendix*, in order to disprove Facts mention'd there, tho' we gave no Evidence concerning them; and we humbly apprehend, it is not necessary for us to follow them as to those Facts; for if we maintain the Charge we have given, it doth not concern us to make good every Article in the *Report* and *Appendix*, relating to this Reverend Prelate now before your Lordships.

My Lords, we must admit the Evidence produced to charge the Reverend Prelate at your Lordships Bar, is Evidence not all of it strictly legal against him, if he was to be try'd according to the ordinary Course of Justice in *Westminster-Hall*. But, my Lords, we humbly apprehend you are not tied to the Rules of *Westminster-Hall*; for if your Lordships are satisfied that the Facts proved, laying them all together, do conclude the Reverend Prelate at the Bar guilty, notwithstanding they do not amount to Evidence according to the ordinary Rules of *Westminster-Hall*, your Lordships will be of Opinion, that it is fit he should be punish'd.

My Lords, the Evidence that hath been given by us, as to Facts committed by the Bishop of *Rocheſter*, hath been chiefly from three Letters, dated the 20th of *April*, 1722; each of these was written in the Hand of Mr. *Kelly*, and dictated by my Lord Bishop of *Rocheſter*.

My Lords, these Letters are writ, some Part in Cyphers, and some Part not; they are sign'd by the Names of *T. Jones*, *T. Illington*, and the Figures 1378. My Lords, if these three Letters are proved, to your Lordships Satisfaction, to be the Letters of my Lord Bishop of *Rocheſter*, we humbly apprehend they do prove all the Allegations in the Bill, which my Lord Bishop of *Rocheſter* hath been pleased to call upon us to shew that he hath been guilty of. They do contain, as we say, and as plainly appears from the Letters themselves, Matters relating to Consulting and Conspiring to invite a foreign Force into this Kingdom for an Invasion, and to promote an Insurrection. And if the Name of *Jackson* is the Name by which the Pretender is signified, that Letter will prove the other Part of the Bill, that the Bishop of *Rocheſter* hath held Correspondence with the Pretender himself.

My Lords, I beg Leave to observe upon the Word *Jackson*; it hath been insisted upon, that tho' it is contain'd in *Plunket's* Cypher, yet *Jackson* may signify in Mr. *Plunket's* Cypher one thing, and in these Letters another; and these Letters are contrived in Figures, and not those Cant Words and Names, as in Mr. *Plunket's*; but so far they go, to admit that in *Plunket's* Cypher the Name of *Jackson* stands for the Pretender.

My Lord Bishop of *Rocheſter* was pleased to observe, that in all the Correspondence between Mr. *Kelly* and the Persons with whom he corresponded Abroad, there is no Name contain'd in Mr. *Plunket's* Cypher, which *Kelly* hath made use of in any of his Letters, but this.

My Lords, it appears to your Lordships, that in the Correspondence between Mr. *Kelly* and the Persons Abroad, several other Names, mention'd in *Plunket's* Cypher, have been used; and it is not material, whether these Names are contain'd in the Letters writ by *Kelly* himself, or in those of his Correspondents writing to him. When his Correspondents write to him, in Answer to his Letters, they use several other of the Names which are contain'd in *Plunket's* Cypher, which, my Lords, we humbly apprehend is the same Thing as to this Purpose, as if they were used in Mr. *Kelly's* Letters; for he must be presumed to know the Meaning of those fictitious Names, when they are contain'd in Letters that come in Answer to Letters from him, in the Correspondence which he carries on; and we humbly apprehend, my Lords, that is as strong an Evidence, as if they had been contain'd in the Letters writ by *Kelly* himself. Therefore, my Lords, I beg Leave to take Notice of several Names that are in Mr. *Plunket's* Cypher, and used by Mr. *Kelly's* Correspondents, in their Letters to him.

There is the Name of *Xoland*, which stands for *Wogan*; the Name of *Lane*, which stands for Lord *Marr*; the Name of *Cane*, which stands for *Dillon*; and the Name of *Howell* for *Glascock*. My Lords, all these Names are in Mr. *Plunket's* Cypher, and made use of in the Letters that pass'd between Mr. *Kelly* and his Correspondents.

My

My Lords, I shall beg Leave to submit it to your Lordships, when, among Persons concerned in carrying on the same Conspiracy, Cyphers are made use of, and in the Cyphers of some of the Conspirators, the Names comprized in Letters writ by others of the Conspirators are contain'd, whether it is not a reasonable Evidence, that those fictitious Names contain'd in the Cyphers of one of the Conspirators, and made use of in the Letters of the other, signify the same Persons; unless there is something to distinguish the Case, and shew that the same Names are made use of to denote several Persons.

My Lords, we humbly submit it to your Lordships, that it is plain from the Evidence we have given, that these three Letters are writ by the same Hand, and, by the Circumstances in the Letters, they appear to be dictated by one and the very same Person. Therefore, my Lords, the Enquiry will be, who is the Person described by the Names of *T. Jones*, *T. Illington*, and the Figures 1378; for if we have proved the Bishop of *Rochester* to be denoted in this Correspondence by the Names *Jones* and *Illington*, and that these Letters were written by *Kelly*, and dictated by *Jones* and *Illington*, then the Bishop of *Rochester* is the Person by whom these Letters were dictated.

This will appear to your Lordships from other Facts contained in Letters intercepted in this Correspondence; Facts that, all of them together, can relate to no Person but the Bishop of *Rochester*.

The Circumstances of the Bishop and his Family are exactly described in the three Letters of the 20th of *April*; and those Circumstances plainly shew, that all the three Letters were dictated by the same Person, and that the Figures 1378 denote the same Person that *Jones* and *Illington* do.

My Lords, there are several other Facts contain'd in the intercepted Letters, that denote *Jones* and *Illington* to be the Bishop of *Rochester*. One of them is, the Fact relating to a Dog sent over to Mr. *Kelly*, which appears, by the Evidence given, to have been design'd for the Bishop of *Rochester*: Therefore in the Letter mark'd *E. 32.* (that is a Letter to Mr. *Kelly* by the Name of *Hatfield*, and directed to Mr. *Hatfield*, under Mr. *Anthony Saunders's* Cover, which is one of the Persons described in the List of Directions taken in *Kelly's* Pocket-Book,) the Letter mentions *the little Dog was sent ten Days ago, and order'd to be deliver'd to you, &c.* — My Lords, afterwards Mr. *Kelly* by a Letter dated the 30th of *April*, 1722, *E. 35.* (it is a Letter from *J. H.* one of Mr. *Kelly's* Names, to *Howell*, and which hath been proved to be Mr. *Kelly's* Hand-writing) says, *I received the Present sent by the young Lady, but in such a bad Condition, that I am afraid he will never do well; for he had a Leg broken in his Journey, which is still very bad with him; however, I will take all the Care imaginable of him, and inform Mr. Jones soon of it, to whom, I know, any thing from that Quarter will be very acceptable.*

My Lords, it appears by this Letter of Mr. *Kelly's*, that this Dog, that is there mention'd, was not a Dog for Mr. *Kelly* himself, but for Mr. *Jones*; a Dog for a Person denoted and understood by the fictitious Name of *Jones*: So that if the Evidence that hath been given of this Dog being design'd for the Bishop of *Rochester*, is true; then it follows that Mr. *Jones*, mention'd in this Letter of *Kelly's*, denotes the Bishop of *Rochester*.

There is another Letter relating to this Dog, *E. 42*; there is mention'd the Concern *Mrs. Illington* was in for poor *Harlequin*; *Mrs. Illington is in great Tribulation for poor Harlequin, who is in a bad Way, having slipped his Leg again before it was thoroughly well; however, his Obligations to the Lady are as great, as if he had come safe, which he desires you to let her know.*

My Lords, this shews that *Jones* and *Illington* are the same Persons. It appears by the former Letter, that the Present was for Mr. *Jones*, and he should soon know of it; this Letter says, that *Mrs. Illington is in great Tribulation, &c. However his Obligations to the Lady are as great, &c. Tho' in the first Part of the Letter it is Mrs. Illington, in the latter Part it is HIS Obligations to the Lady are as great as if he had come safe, which HE desires you to let her know.* That shews, that the Person in the former Letter, described by the Name of *Jones*, is in this Letter described by *Illington*; and consequently *Jones* and *Illington* are the same Person.

My Lords, the next Circumstance observable in these Letters, the intercepted Correspondence between Mr. *Kelly* and his Friends Abroad, is the Letter dated the 30th of *April* 1722, *E. 35.* which says, *Mrs. Jones died last Week, and when the Days of Mourning are over, he will, I hope, be fit for Business.*

My Lords, it hath been given in Evidence, that the Bishop's Lady, his own Witnesses as well as ours, have given an Account, that the Bishop's Lady died the

the 26th of April: This Letter is dated the 30th of the same April, consequently this suits exactly with the Bishop's Circumstances as to his Lady being dead.

My Lords, that Jones and Illington are the same, appears likewise by the Answer given to this Letter dated the 20th of May 1722, E. 43. which says, *Mrs. Chivers gives you her kind Service, and prays you will condole in his Name on the Death of Mrs. Illington.* My Lords, this Letter is in Answer to that of the 30th of April, for it begins, *Yours of the 30th of April, which should have come by last Post, is come to Hand;* and this Letter condoles on the Death of Mrs. Illington, whereas the Letter of the 30th of April gave an Account that Mrs. Jones was dead: So that Jones and Illington appear by these Letters to denote the same Person.

My Lords, these are Letters writ by Correspondents, concern'd, one with another, in carrying on this Conspiracy. It hath been objected on the Behalf of my Lord Bishop of Rochester, that he is not concern'd in writing of these Letters, nor did any of them come to his Hands, nor were they writ by his Directions, but that they pass'd between Mr. Kelly and his Correspondents Abroad.

Your Lordships, we hope, will be of Opinion, in a Correspondence of this Nature, (unless they shew something to induce your Lordships to believe, that there hath been a malicious Design in the Parties between whom these Letters pass'd, to denote the Bishop of Rochester, in order to charge him) that these are Facts, which amount to a certain Proof who the Person is, that used to go by the Names of Jones and Illington.

Your Lordships observe how the Matter stands: Mr. Jones and Illington is a Person described, by the Letters of the 20th of April, to be in great Pain himself, to be in melancholy Circumstances in other Respects: He appears by the Evidence at that Time to have been ill of the Gout, his Lady appears to have been ill, and dying; Mrs. Jones and Mr. Illington is a Person to whom a Dog was sent, and it appears by the Evidence, that this Dog was design'd for the Bishop of Rochester. Mrs. Jones, in one Letter 'tis said, died last Week; and in another Letter they condole the Death of Mrs. Illington; and it appears the Bishop's Lady died the Week before the 30th of April.

My Lords, there are other Circumstances, which I should mention, in relation to the Times when the Bishop was in London, and when in the Country; which, we apprehend, is an additional Proof who was meant by the Names of Jones and Illington. Therefore in Letter E. 41. a. Kelly says, *Mr. Illington is now in Town, and presents his kind Service to you; He is glad to hear you received his Letters by Crow, and wishes his next may be more to your Satisfaction.*

This Letter is dated the 7th of May; there it is said Mr. Jones is now in Town: It appears, by the Examination of Wood the Coachman, that on the 7th of May my Lord Bishop of Rochester was in Town.

There is another Letter dated the 7th of May 1722, directed to Masgrave, E. 42. which I beg Leave to make some Observations on. There it is said, *I had the Favour of yours, which I communicated to Mr. Jones, who is come to Town only for a Day.*

My Lords, this Letter shews, that the Person denoted by the Name of Jones was come to Town; but they object that this Letter cannot be apply'd to denote the Bishop of Rochester, because it appears by the Deposition of Wood, that the Bishop of Rochester staid in Town till the 10th of May; so consequently he did not come to Town only for a Day, and consequently can't be the Person meant in that Letter.

My Lords, as to that, it appears, that the Fact concerning Mr. Jones, applying it to the Bishop of Rochester, of his being come to Town, is true; as to the Bishop's being come to Town only for a Day, that is not Matter of Fact, but of the Apprehension of the Writer: He apprehended he was only come to Town for a Day, but he might be mistaken in that; but the Fact of his being come to Town is true, the Apprehension of the Writer that he came only for a Day, is false. But we must submit it to your Lordships; the Apprehension of the Writer is not sufficient to avoid the Truth of the Fact contain'd in that Letter, when we have proved that my Lord Bishop of Rochester was in Town on the Day when Mr. Jones is mention'd to have been in Town in that Letter.

Another Letter dated Thursday the 10th of May, 1722, E. 44. says, *Illington is gone to the Country, and sent me Word he would be in Town on Tuesday Night, when he hath desired to see me at a particular Hour, by which I conclude it may be about Business;* and the Tuesday following that Thursday happen'd to be the 15th of May. Another Letter E. 45. and dated the 14th of May, 1722, says, *Mr. Jones*

is still in the Country, but he hath sent me Word he will be in Town to morrow. My Lords, upon the Examination of the Coachman *Wood*, it doth appear that the Bishop of *Rochester* was out of Town the 10th of May, out of Town the 14th of May, but that he came to Town the 15th of May; which is the Day mention'd in these Letters that he had promised to come to Town: So that here are additional Circumstances, all agreeing to prove that the Bishop of *Rochester* was denoted by the Names of *Jones* and *Illington*. My Lords, we must submit it; that this is not probable conjectural Evidence only, as has been objected.

These Letters contain Facts; and the Consequence from them is, that *Jones* and *Illington* is the Bishop of *Rochester*, in whom all these Facts agree. It is almost morally impossible, that all these Facts should agree in the Case of any other Person, as they do in the Case of the Bishop of *Rochester*.

It hath been argued, as to the Letters of the 20th of April, Was he the only Person that was in Pain and melancholy Circumstances at that Time? A great many might be so. They go thro' the Particulars of his being in Town and in the Country; a great many Persons might be in Town and in the Country on those Days besides him. It is true, it might be so. Was there no body whose Lady died the Week before the 30th of April, but the Bishop of *Rochester*? Certainly, there are a great many to whom that Circumstance may be applied. But, my Lords, taking the Circumstances together, they cannot all of them concur in the Case of any other Person, as they do in the Case of my Lord Bishop of *Rochester*.

It may not be improper here to take Notice of some other of the intercepted Letters, that have been given in Evidence to your Lordships, which mention the Names of *Jones* and *Illington*.

In Mr. *Kelly's* Letters, giving an Account of his being taken up and his Examination before the Council, he takes Notice of his being examined concerning the Persons that were meant by several fictitious Names, and, among the rest, *Jones* and *Illington*, who, he says, are chiefly struck at. This is to give an Intimation to his Correspondents Abroad, that there had been a Discovery, that the fictitious Names, concerning which he had been examined, were made use of in their Correspondence.

My Lords, he comes afterwards and writes a Letter, after such Time as he was bail'd (he was taken the 19th of May, and bail'd the 7th of June) wherein he says, it is absolutely necessary now, that there should be a new Book of Accounts; says he, they must use no more their present Book of Accounts, since those, who have got Part, may have got the Whole.

My Lords, we humbly submit it, that he having given an Account of his being examined concerning those several fictitious Names, after when he comes and says it is absolutely necessary to have a new Book of Accounts, it is a plain owning of *Kelly* by this Letter, that the Names inquired after were the Names made use of in the Correspondence, and therefore he says, it is necessary to have a new Book of Accounts, that is, other Cyphers and fictitious Names, by which to carry on their Correspondence: He owns they have got Part, and fears they may have got the Whole.

From that Time the Names of *Jones* and *Illington* are no more met with in the Correspondence that follows. We have gone no farther in our Evidence to fix any other Names to mean the Bishop of *Rochester*, but only the Names of *Jones* and *Illington*. But there are other Names, which, in the Letters that follow, probably are design'd to mean the Bishop of *Rochester*, but they will be out of the Case, because we have given no Evidence concerning them; and the plain Reason why *Jones* and *Illington* are not made use of any longer, is, because it appears on the Examination of Mr. *Kelly*, that those Names were mentioned; therefore they were afraid, by making use of those Names, the Correspondence might be discover'd, and it might prejudice the Persons who went by those fictitious Names.

My Lords, this is the Substance of the Letters, writ to and from Mr. *Kelly* and his Correspondents, concerning the Person that goes by the Names of *Jones* and *Illington*.

Tho' my Lord Bishop of *Rochester* insists, that he is not proved to be the Person concern'd in writing these Letters, and that he had no Notice of them, and therefore they ought not to be look'd upon as Evidence against him; my Lords, we submit it to your Lordships, in a Correspondence of this Nature, when we pursue Facts and Circumstances that are stated and arise from the intercepted Letters, which when they come to be apply'd together, are a plain Indication of the Person that is meant by them; when these Circumstances and Facts can fit none but the Bishop of *Rochester*; we hope, tho' it is not legal Evidence in *Westminster-Hall*, yet it is satisfactory Evidence to induce your Lordships to believe and be convinced, that no Person can be denoted by these Names but the Bishop of *Rochester*.

My Lords, this is a Matter that the Bishop of *Rochester* could not, with all his Care, be aware of; he takes Care that the Letters of the 20th of *April* are in Cyphers, and not writ with his own Hand; fictitious Names are made use of, and he thinks he shall be sheltered by this Means from being found out to be the Person. The other Facts could not be supposed would come out to explain the Person.

But, my Lords, very often there is a Providence in detecting Things of this Nature, and where the greatest Caution and Care is used, Circumstances (that human Prudence could not guard against) are so strong and convincing, that they discover such secret Correspondence, and plainly prove who is the Person carrying it on.

Since Texts of Scripture have been cited on the other Side, my Lords, I beg leave to use one on this Occasion; and that is, *Curse not the King, no, nor in thy Thought, for a Bird of the Air shall carry the Voice, and that which hath Wings shall tell the Matter.*

In these treasonable Conspiracies and Correspondences against the King and Government, (notwithstanding they are carried on so secretly, that the Conspirators think nothing can discover them) there happen sometimes, through Providence, such Circumstances which the Persons cannot be aware of, that bring those things of Darkness to Light; and we hope this may be an Example, that may deter any Person from going in the most secret and concealed Way to engage in any thing of this Nature.

My Lords, there is a Matter I shall beg Leave to mention to your Lordships, because my Lord Bishop hath insinuated as if I made hard and harsh Application of the Letter taken upon his Servant. My Lords, he says that the Construction I put upon that Letter was not a natural but an ill-natur'd Explication. The Letter mentions an Impeachment, and says the Bishop in the Letter, *if the Impeachment cannot be stopt, I am Prisoner for some Years without Remedy.*

My Lords, I did observe to your Lordships on that Expression in the Letter, that it seem'd to import a Sense of my Lord Bishop's Guilt, because he said he was unavoidably a Prisoner for some Years. My Lord Bishop says, this is by no Means a natural but a forc'd and ill-natur'd Explication; for in that Place he meant no more than if an Impeachment were lodged, it would not be prosecuted, but made Use of only that he might be detained a Prisoner for some Years.

My Lords, I must submit it to your Lordships, which is the most genuine and natural Interpretation, that which I put upon the Words, or that which my Lord Bishop of *Rochester* doth; which so highly reflects on the Honour and Justice of your Lordships, and the House of Commons.

My Lords, I shall beg Leave in the next Place to take Notice of the Evidence that hath been given on the behalf of my Lord Bishop of *Rochester*, and to consider, whether that is sufficient Evidence to satisfy your Lordships of his Innocence.

My Lords, we did read the Examination of Mr. *Neynoe*, one of his Examinations, and the last that was taken; they on the other Side called for three other Examinations, of which the last Examination, which we read, was an Abstract; they read them all, and, my Lords, the Examination which we read, was consistent with three other Examinations, with relation to my Lord Bishop of *Rochester*; and I must own that the Charge, in the Examination of *Neynoe*, upon my Lord Bishop of *Rochester*, is only Hearsay from *Kelly*; that Mr. *Kelly* did tell *Neynoe*, that the Bishop of *Rochester* held Correspondence with the Pretender and his Agents; and that he was employed by the Bishop in writing for him, and carrying on the said Correspondences: So far, my Lords, it is Hearsay, what Mr. *Kelly* told *Neynoe*. Now, as to Mr. *Kelly* himself, it did affect him by charging that he had confess'd to *Neynoe*, that he did carry on such a Correspondence; but as to my Lord Bishop it cannot affect him but as Hearsay, and we must agree that if there was nothing else in the Case but this, all the Arguments made use of against such Evidence would be of great Weight.

My Lords, I can't say that this Charge from *Neynoe*'s Examination is of Weight to charge the Bishop of *Rochester*, so as to condemn him. My Lords, they have urged that if this Charge is not to be believed, all comes to nothing: This, say they, is the Foundation, and if *Neynoe*'s Examination is not sufficient to affect the Bishop of *Rochester*, then all the subsequent Evidence falls to the Ground.

My Lords, I beg Leave to observe first, that if we had not *Neynoe*'s Examination, the Proof against my Lord Bishop of *Rochester* is as strong without it as with

with it; it is certainly Evidence of the Conspiracy in general, but as to the Bishop it is only a Circumstance to shew, that another Man had said of the Bishop of *Rochester*, that he was carrying on a Correspondence with the Pretender, &c.

But, my Lords, taking the Examination of *Neynoe* out of the Case, and considering the other Facts mention'd and prov'd to your Lordships, there is no Occasion of *Neynoe's* Examination; whether *Neynoe's* Examination be false or true, is not material: There is sufficient to prove the Bishop of *Rochester* guilty, for they can't destroy the other Facts and Circumstances; and as long as they subsist, they prove the Bishop of *Rochester* to be the Person concerned in carrying on this Correspondence.

My Lords, I beg Leave to observe in *Neynoe's* Examination, there is something more than Hearsay, there is a Fact in it, and we are able to support that Fact by other Evidence. *Neynoe* says, that he hath gone several Times with *Kelly* to the Bishop of *Rochester's*, and hath staid a considerable Time for him. My Lords, we shall prove by another Witness, that *Neynoe* about that Time came several Times to a House, where he said he waited for a Friend of his that was gone to the Bishop of *Rochester's*, and he staid and waited for him three or four Times, for an Hour, and an Hour and an Half together. This will confirm what *Neynoe* said in that respect to be true.

They say there are several Improbabilities contained in *Neynoe's* Examination, and Inconsistencies; as to the Improbabilities, some of them are mentioned as if there was great Weight in them. That so much insisted on by my Lord Bishop himself, is, that *Neynoe* says, he was employed to write Memorials, and the last he wrote was in *December*, and that was to desire the Regent of *France* to furnish a Body of 5000 Men, to come and invade these Kingdoms: The Observation made by the Bishop of *Rochester* is, where are these Memorials? Why did he not keep Copies of them? For he was at that Time concerned in a Design to serve himself one way or other; if he designed to betray those Persons he corresponded with, it would have been of Service to have kept those Memorials, to have delivered them to the Government. If on the other Side he had kept to his Friends, it would have been proper to have kept them, in order to create a Confidence in him, and to shew the Part he had in the Conspiracy. These Observations can have no Weight, when your Lordships come to consider this was in *December*, and there was never any Application by him to make any Discovery of this Conspiracy 'till *July* following. As to the Service it might be to keep them with respect to his Party, my Lords, we humbly apprehend that, considering him as a Man engaged in a Correspondence of this kind, a Memorial of this Nature drawn up by him can be of no Use, but to detect himself and injure his Party, if he happens to be taken up, and such a Memorial found upon him; therefore it was necessary to destroy it.

My Lords, there is another thing mentioned with relation to *Watson*, and the Improbability of his being the Earl Marishal; but *Neynoe* does not say that he was the Earl Marishal, but says, there was one *Henry Watson*, which he took to be a fictitious Name, and does not know who he really was, but he took him to be the Earl Marishal, and he gave him the Heads to draw up these Memorials.

My Lords, we apprehend it is not material, who *Watson* was; he is a Person that employed *Neynoe* to write these Memorials, and he might be the Earl Marishal; *Neynoe* says he took him to be so. Say they, if it was the Earl Marishal, why should he lie several Nights with *Neynoe*, this, say they, is very improbable. If it was him, he was to conceal himself, and take the fittest Place for that Purpose; therefore conversing with *Neynoe*, and not owning himself who he was, is not improbable. It is probable he would not discover himself to every Person, and tho' *Neynoe* was a Person engaged in the Conspiracy, if *Neynoe* did not know him to be the Earl Marishal, it might not be proper for him to discover himself to *Neynoe*.

My Lords, I think these are the principal Things objected; there are some other little Matters, but I think dwelling on such Objections as these, is but mispending your Lordship's Time.

My Lords, that which we humbly insist upon is, whether *Neynoe's* Examination is an Examination to be credited or not credited. We agree it is only Hearsay, as to the Bishop of *Rochester*, and if we had not other Matter, it would not be sufficient; so that we humbly apprehend it's being true or false won't affect this Case. If your Lordships are of Opinion 'tis false, there is sufficient Evidence against the Bishop of *Rochester* without it.

My Lords, in the next Place they have produced in Evidence several Persons that come and give your Lordships an Account of *Neynoe's* Confessions to them. There is one Mr. *Bingley*, Mr. *Steward*, and Mr. *Skeene*, and two other Persons; that give an Account of what Mr. *Skeene* and *Steward* had told them Mr. *Neynoe* had said.

Bingley by his Evidence would have it believed, that *Neynoe* had told him, he was employed by some Person in Power, to fix several things upon several Persons that they were innocent of; that he had said several things that were false, and had imposed upon a great Man he had made Application to, and had got great Sums of Money out of him.

My Lords, I don't know how far they would carry this, for by what hath been insisted upon by my Lord Bishop of *Rocheſter*, and his Counsel, it should seem as if they were labouring to shew from these Persons, that they have call'd to be examin'd, that all the Letters relating to this Correspondence, the Letters of the 20th of *April*, and subsequent Letters, that relate to the particular Facts that denote *Jones* and *Illington* to be my Lord Bishop of *Rocheſter*, were contrived between *Neynoe* and some other Persons, in order to charge my Lord Bishop of *Rocheſter* with being concern'd in this Conspiracy. This seems to be what they are labouring at by this Evidence.

My Lords, as to *Neynoe's* being a Person employ'd in writing these Letters of the 20th of *April*, or any subsequent Letters, in Manner as is suggested, we shall shew your Lordships that it's impossible to be true; we shall shew that the Letters of the 20th of *April*, and all the other Letters that mention the Facts which denote the Bishop of *Rocheſter*, were all intercepted and in the Hands of the Government, before such Time as it was known among the Ministry that there was such a Person as *Neynoe*: For *Neynoe* made Application to the Honourable Person mentioned by their Witnesses, subsequent to all this Correspondence, when these Letters were in the Hands of the Government, as a Person that could make Discoveries to the Government. Therefore that Insinuation must vanish, that *Neynoe* was employ'd to forge Letters, which contain Facts under the Names of *Jones* and *Illington*, to charge the Bishop of *Rocheſter*; and that even those Letters of the 20th of *April* were forged by him.

My Lords, we shall go into the Character of Mr. *Bingley*, who hath at your Lordships Bar owned, that he hath been whipt, pilloried, and imprisoned; and as he hath taken his Degrees, as he owned at your Lordships Bar, consequently he hath taken the Oaths.

As to the Character of Mr. *Skeene*, he hath likewise been produced as a Witness, and he carries his Evidence farther than the Evidence of Mr. *Bingley*; for whereas Mr. *Bingley* says, that *Neynoe* confessed he had imposed upon that Honourable Person, and had mention'd things that were false, yet he could not say that after the Time of his Examinations, after *Neynoe* was brought from *Dover* to Town, he had confess'd to him that what he had said on those Examinations was false: But *Skeene* says, that after his Examinations he own'd that they were false. The last Examination was the 27th of *September*, and he was drown'd that Night; but as to the Examinations before the 27th of *September*, and out of which that is collected, Mr. *Skeene* says, *Neynoe* said to him, that they were false.

My Lords, as to Mr. *Skeene*, we shall shew what sort of a Man he is, a Man attainted of High Treason; and though he is pardoned, as to his having his Life and Liberty given him, he is in all respects an attainted Person: He was try'd and condemned in the County of *Surrey*, for being concerned in the *Preston* Rebellion, and consequently a Man of no Credit. And as to what he and *Steward* swear, relating to a Conversation with *Neynoe*, when in Custody, we shall shew they never were together after the first Night, when they sup'd together. He was asked, whether it was the first Night that he had this Conversation with *Neynoe*, and he did not pretend he had any Conversation of this Nature with *Neynoe* the first Night; and if it was not the first Night, we shall shew it could not be afterwards, for *Neynoe* was kept in a Room by himself, *Skeene* and *Steward* by themselves in a Room underneath; and therefore this seems to be a Story contrived between *Skeene* and *Steward*.

We shall shew it could not be possible for them to converse together, for *Skeene* and *Steward* were locked up in their Room; *Neynoe* was lock'd up in his Room separate and apart from theirs; so that they could never have Correspondence with him, nor come near him.

Another thing is sworn by one of them, about a Message sent to him by *Neynoe*, and a Paper, while they were in Custody of the Messenger; and he says, this

this Paper was brought to him by the Messenger's Maid from *Neynoe*, and that this Paper contain'd a Justification of my Lord *Orrery*, expressing that he knew nothing of my Lord *Orrery*, but what he had said of him was utterly false; that the Messenger finding he had some Paper, he, to conceal this Paper, burnt it: But that the Maid came to him with such a Message or Paper is false; the Maid never did, nor did the Messenger know of the Paper, as we shall prove to your Lordships.

My Lords, when we have proved this, we humbly apprehend we have taken off any Credit that could be given to what these People have said, if they have said any thing material. My Lords, before I leave this Head, I beg leave to observe another thing as to *Skeene*. He, upon his Examination concerning a Discourse with *Pancier*, denies it intirely; but says, that what *Pancier* hath inform'd in relation to him, is false. We shall call *Pancier*, who will inform your Lordships, that *Skeene* hath own'd that he was privy to this Conspiracy, and knew who were concern'd in it.

I own there are several noble Persons named to be concern'd, that there is no Reason to say, from what *Skeene* may have said of them, that they are guilty: But such as he may have used the Names of great Persons designedly to keep up the Spirit of their Party, by telling them such and such Persons were concerned; and if there is no other Evidence but what such a Person hath said, the noble Persons mentioned will not be affected by it.

My Lords, there is another Head I shall beg leave to mention, and what they have insisted upon under this Supposition; that they would have it taken that there was a Design to forge Letters, in order to charge my Lord Bishop of *Rochester*, and several other Persons. Say they, it was easy to get Information of such Circumstances relating to the Bishop and his Family, as are mentioned in the intercepted Letters, and then to write such Letters with a Design falsely to charge the Bishop with having been concerned in carrying on a treasonable Correspondence. Your Lordships will please to consider who this Charge must fall upon of forging the Letters of the 20th of *April*, or the Letters that shew *Jones* and *Illington* to be the Bishop of *Rochester*.

My Lords, we have proved them all to be Mr. *Kelly's* own Hand-writing, or Letters that have come in Answer to them. They have objected we have not given sufficient Proof of *Kelly's* Hand; say they, it is proved by Clerks of the Post-Office, who never had compared one original Letter with another, but at last they stop an original Letter dated the 20th of *August*, after the Correspondence had been carried on several Months; and then come and swear that the original Letters, that were forwarded, were of the same Hand-writing with that of the 20th of *August*. Can this be looked upon as sufficient Proof? But we submit it, their Evidence is much stronger than if they had only compared one Letter with another; for they not only had these Letters come every Week, but they were employ'd every Time these Letters came, to copy them; so that the Hand-writing of these Letters must by the constant stopping of these Letters, and their copying of them, be so imprinted on their Memory, that they are much better Judges of the Hand than if they had two of these Letters to have only compared them together: And the Hand-writing was so well known to them, that they could, as they have inform'd your Lordships, when any of these Letters came, distinguish them by the Hand-writing of the Supercriptions, before they had open'd them, and they never were mistaken: And this we humbly apprehend is as satisfactory an Evidence as can be given, that these Letters were the Hand-writing of Mr. *Kelly*, provided the Letter of the 20th of *August*, which I shall take Notice of by and by, is sufficiently proved to be of his Hand-writing.

Taking it then, my Lords, that these Letters are the Hand-writing of Mr. *Kelly*, and of his Correspondents in answer to them, I don't find that my Lord Bishop of *Rochester* hath charged Mr. *Kelly* with having any Malice to him. And if he had no Malice to the Bishop of *Rochester*, what should induce him to write those Letters, on Purpose to charge the Bishop of *Rochester* with being concerned in this Conspiracy?

My Lords, we humbly apprehend the Pretence of these Letters being forg'd must insinuate, that *Kelly*, a vile Fellow, intending to charge the Bishop of *Rochester* with being concerned in this Conspiracy, and make him liable to forfeit every thing that was dear to him; hath contrived Letters containing Circumstances, in order to fix him to be the Person denoted by the Names of *Jones* and *Illington*; he hath written Letters, and by Combination received others in Answer to them;

them, for this Purpose; and by these wicked and malicious Practices, hath furnished this Evidence against the Bishop, who is an innocent Man.

My Lords, this is the Substance of the Defence on this Head, and whether your Lordships will believe this, we must submit to your Lordships. Your Lordships have had *Kelly* before you, and by his Behaviour have had no Reason to think that he had any Malice against my Lord Bishop of *Rochester*, or any Design or Intention to prejudice him.

My Lords, the next Part of the Evidence I shall beg Leave to observe, is a Part very considerable, and is so far from being a Defence, that the Defence attempted hath confirm'd and strengthen'd the Evidence against my Lord Bishop of *Rochester*; that is, with relation to the Letter taken among my Lord Bishop's Papers, directed to *Dubois*; a Letter, which they observe, don't contain any Treason, or is of any treasonable Import; but it seems to be a Letter of Indifference, and I believe, as such, it was not taken Care to be destroy'd, as it would have been, had there been any Apprehension that Use would have been made of it as now against the Bishop of *Rochester*.

My Lords, the Use we make of it is, to shew that Mr. *Johnson*, or Mr. *Kelly*, was a Person employed by my Lord Bishop of *Rochester* in writing Letters for him. My Lords, your Lordships will observe by the Letter, he says, *I have heard nothing from you since the Letter I had about two Months ago by Mr. Johnson, to which I immediately in his Hand returned my Answer.*

My Lords, if this is the Bishop of *Rochester's* Letter, either in his own Hand, or his Letter writ by another Person, it plainly proves what we infer from it, that *Johnson*, i. e. *Kelly*, writ for the Bishop. Your Lordships will observe, it is a Letter writ in a Hand which no Man writes, a stiff Hand almost like Print; and it is plain that it is writ to disguise the Hand of the Writer, whoever he was. At the latter End of the Letter, when the Person that writ it comes to be tired and off of his Guard, there are several Letters which compared with the writing of my Lord Bishop of *Rochester*, and what is own'd to be his, appear to be his writing. In the Date of the Letter, which is *December*, the D you frequently find in the Bishop's Hand-writing; your Lordships observe the Letter E that frequently occurs in the Bishop's writing; and your Lordships by comparing that with the Letter produced, will find that they exactly agree.

Whether or no your Lordships won't think it on those Circumstances, to be the writing of my Lord Bishop of *Rochester* in a disguised Hand, we must submit to your Lordships. But, my Lords, suppose it was not his Hand-writing, here is Evidence that it was his Letter; and that is evident, because it is under his Seal, it is sealed with his own Seal, a Seal that he had in his Custody, and made Use of no longer ago than the 26th of *February* last: I think that is the Day a Letter was taken from his Servant. That we humbly apprehend, my Lords, will plainly shew it is the Bishop's Letter, because it was sealed with his Seal, and the same Seal is made Use of by the Bishop on the Letter that was taken upon his Servant in *February* last.

My Lords, this Matter hath been controverted by my Lord Bishop. He hath call'd Engravers, who believe Seals may be counterfeited, and Impressions may be taken off the Wax, and another Impression made, so as to make it difficult to know which is which. They were a little loole in answering the Question, Whether or no, if the Seal, from whence the Impression was to be taken, was broken in the Middle, it could be done. But one said, the Seal might be mended, and it might pass unobserved; but I find it is extremely difficult. But they did say, Seals may be so counterfeited, that it may be difficult to discover one from the other. My Lords, this is to insinuate, that after such Time as the Letter was taken upon my Lord Bishop's Servant, the Person in whose Custody this other Letter of *Dubois* was (which is proved to have been taken the 24th of *Aug.* amongst the Bishop's Papers) hath caused an Impression to be taken off the Seal with which the Letter to *Dubois* was seal'd, (the Wax broken in two as it was) in order to fix it upon the Letter that was taken upon my Lord Bishop's Servant, so as to prove the Letter to *Dubois* to be the Bishop's Letter. Who is this to be fixed upon? *Neynoe* was gone; I don't know, unless upon the Committee of the House of Commons, for the Bishop's Letter was taken on his Servant the 26th of *February*, the Committee of the House of Commons made their Report on the 1st of *March*,
and

and the Letter to *Dubois* had long before the 26th of *February* been in Custody of that Committee. And yet while this Letter is in Custody of a Committee of the House of Commons, they will have it here is an Impression taken off a broken Seal, and put on this other Letter, in order to shew that these are Letters of the same Person. Who can believe this to be the Case?

An Observation hath been made, that truly the Committee of the House of Commons have not made any Observation of this Kind, with relation to this Letter to *Dubois*, that it is the Bishop's Letter, Which is true; for they had not this Matter relating to the Identity of the Seals, under their Consideration; but this is a new Discovery made since: And therefore, my Lords, they apprehended that this was a Letter directed to the Bishop by the Name of *Dubois*, it being found amongst his Papers, and nothing to the contrary did appear, till after they had made their Report.

My Lords, there are other Things your Lordships would have expected to have had an Account of in Answer to this Evidence. Here is a Letter found among my Lord Bishop's Papers, consequently so far we apprehend that this Evidence is a legal Evidence against the Bishop, as being a Letter found in his Custody; this Letter is directed to *Dubois*, and mentions the Hand of *Johnson*. Doth my Lord Bishop of *Rochester* give any Account who *Dubois* is? who this *Johnson* is? how this Letter came there? No, my Lords, none at all. Doth his Lordship give you any Account of the Seal? and hath his Lordship said that the Seal, that sealed the Letter taken on his Servant, he hath not? or that the Letter was not sealed with his Seal, or that he did not seal it himself? His Lordship did not say one Word to that Purpose, or make any Denial of the Matter, nor give your Lordships any Account who *Dubois* and *Johnson* were; nothing at all, but hath left it to your Lordships on that Foot; That the Letter to *Dubois* had an Impression taken off, after it was in the Custody of the Committee of the House of Commons, and that Impression made use of on the other Letter; and that this is another Part of the Contrivance in order to charge my Lord Bishop of *Rochester* with being concern'd in this Conspiracy.

My Lords, as to the Seals being the same on the two Letters, we humbly apprehend, the Evidence given on the other Side hath strengthened ours. We have produced two Engravers, one of them they own to be the top Engraver of *England*, Mr. *Christian*; he gave your Lordships an Account, that he verily believed these two Impressions to be taken off from the same Seal. Mr. *Rollus* said the same thing, and that he had used the Art long, and could judge. They made no Endeavours on the other Side to try the Skill of Mr. *Christian*, but as to Mr. *Rollus*, they hoped they should be able to puzzle him; and therefore have produced six several Impressions made on Wax by Seals to try his Art; and after he had look'd upon them, he gives you such an Account, that I believe your Lordships are satisfied that he is a Man of Skill and Art, and that, if these Impressions had been taken off, as they would insinuate they were, he must have discover'd it.

My Lords, here is an Artist brought to make this Experiment on *Rollus*, to try his Skill; yet notwithstanding all the Art hath been made use of in the Case, that could be, the Man was able not only to distinguish how many Seals the Impressions were made with, but also to give an Account that they were cast Seals, and not grav'd Seals, that made those Impressions.

This, my Lords, will have such a Weight with your Lordships, that we hope your Lordships will believe his Evidence is true; and if it is true, what Answer hath been given it your Lordships have heard. Whether therefore any satisfactory Answer hath been given to an Evidence so strong and convincing of *Johnson's* being employ'd in writing Letters for the Bishop of *Rochester*, we must submit to your Lordships.

My Lords, the next Evidence they went upon was in relation to the Dog. Say they, we will shew that this Dog was not for the Bishop of *Rochester*, or any other Person but Mrs. *Barnes*. As to that, my Lords, I beg leave to remind your Lordships of the Evidence given by Mrs. *Barnes*, that Mr. *Kelly* told her it was for the Bishop of *Rochester*. It is a little improbable, if the Dog had been for Mrs. *Barnes*, that he should come and deliver it to her, and tell her 'tis for the Bishop of *Rochester*. But it appears by Mrs. *Barnes*, that another Dog was designed for her, and that this Dog was for the Bishop of *Rochester*. They have read in Evidence a Certificate, sign'd by Mr. *Birmingham*, and likewise an Affidavit, that there was in the Month of *March* a Dog deliver'd to *Kelly* in *France* for Mrs. *Barnes*. That, my Lords, must be another Dog, and not this, which we say was for the
Bishop

Bishop of *Rochester*; for this was not deliver'd to Mr. *Kelly* in *France*, but was sent over to him after he was in *England*, as appears by the Letters; and after he had receiv'd it, he writes, that he would inform Mr. *Jones* soon of it, to whom any thing from that Quarter would be very acceptable. So that, my Lords, if there was another Dog, and by Mr. *Kelly* design'd for Mrs. *Barnes*, we humbly apprehend it cannot be applied to this; for this Dog was design'd for Mr. *Jones*, and Mrs. *Barnes* says that is the Bishop of *Rochester*.

My Lords, the next Evidence given by them is in relation to the Letters of the 20th of *April*. They have endeavour'd to prove that, as to my Lord Bishop of *Rochester*, it is impossible that these Letters could be written or dictated by him. He came to Town the 11th, and went to *Bromley* again the 12th of *April*; he had a Fit of the Gout soon after; had Servants that constantly attended him, more than one; and these Servants give an Account, that no Person whatsoever came near him, or could be employ'd by him to write those Letters.

My Lords, I beg Leave to observe, first, That as to the applying their Evidence to the Writing of those Letters on the 20th of *April*, it is very possible that the Letters were writ on another Day than when they bear Date. Therefore if they prove, that it was impossible that these Letters should be writ or dictated by the Bishop of *Rochester* on the Day they bear Date, yet they might be writ on another Day, and it is very probable they were.

Your Lordships will observe, that these Letters are in Cyphers; and, I believe, where a Person dictates a Letter to another, he doth not reduce the Letter into Cyphers as it is dictated, but he first writes it out in Words at Length, and afterwards puts it into Cyphers, and when it is proper to send it, then is the Time to date it; and if it be left with the Person that puts it into Cyphers to send, as probably it was in this Case, it is left to him to date it when he pleaseth: So that if they should have shewn, that upon the 20th of *April* the Bishop was incapable of dictating or writing, it is no conclusive Answer to the Charge against the Bishop as to these Letters.

Your Lordships will please to observe, that upon the 11th of *April* the Bishop of *Rochester* came to Town, on the 12th he went into the Country; notwithstanding what they have attempted to prove as to the Times that *Kelly* was in Town, and the Bishop was in the Country, yet upon the 11th and 12th they were both in Town; for *Kelly* came to Town from *France* the 11th, and the Bishop came to Town the 11th from *Bromley*.

When the Servants came to be examin'd, what Time of the Day the Bishop came to Town on the 11th, they could not give any Account of that; when they were asked, what Time of Day it was when he went out of Town on the 12th, they could give no Account of that.

There hath been no Account given to your Lordships, who was with the Bishop of *Rochester* the 11th and 12th, when he was in Town, or where my Lord Bishop was at that Time: So that, my Lords, it is possible from these Circumstances, that these Letters might be writ when the Bishop was in Town and *Kelly* was in Town.

But suppose it should not be so; the Question is, whether they could not be writ at *Bromley*. On the 12th of *April* Mr. *Kelly* was at Mrs. *Barnes*'s, he did not lie at Home that Night; on the 13th he did not lie at Home; on the 14th he came and went to his old Lodgings at Mrs. *Kilburne*'s: These two Nights it doth not appear where he was; he might have been at *Bromley*, it is but an Hour's Ride. As to the Servants, say they, they should have remembred his setting up his Horse;—He might set up his Horse at an Inn, and go privately to my Lord Bishop.

Notwithstanding my Lord Bishop was ill, and tho' he should have proved to your Lordships Satisfaction, that after he was so, he did not nor could admit of Company, yet we submit it to your Lordships that it is no Answer, for he was not very bad till he had been in the Country two or three Days, and these Letters might be dictated or written in those two or three Days before he was so ill.

My Lords, I beg Leave to observe, what the Servants have sworn. Here is *Grant*, that is my Lord's Butler, he says, that my Lord Bishop went the 12th of *April* to *Bromley*, and he attended him there till the 21st, and on the 21st he was sent to Town upon some Matters relating to the *Westminster*-Election; and another Servant about him gives an Account, that two or three Days after my Lord Bishop came down, he was taken so ill in his Hands and Feet, as not to be able to help himself——These are two or three

three Days beyond the Time, that *Kelly* was out of his Lodging: which was the 12th and 13th, (and these two or three Days must be the 14th and 15th) it may be my Lord Bishop was so disabled indeed as he says: he says he is almost certain that no Stranger was with the Bishop; but he says the Apothecary or the Minister might be with him in his Illness, tho he did not see them himself. If it is possible for the Apothecary and the Minister to be with him, and he not see them, why is it not as possible that Mr. *Kelly* might be there, and he not see him there?

The next Witness that is called, only speaks to the 18th and 19th; when *Grant* came to the Election another Servant was sent for, and he went, and he says my Lord Bishop was very ill. *Samuel Steele* gives an Account of my Lord Bishop's Illness, and his attending him.

My Lords, they have brought all the Servants of the House, the very Stable-Boy, to prove that my Lord Bishop could not see any Body without their Knowledge; even the Nurse that attended his Lady when she was dying. The Servants that were waiting upon his Lady swear, That it was impossible any body could come to my Lord Bishop, and they not know it; and they are as positive, in relation to any body's coming to my Lord Bishop, as the Servants that immediately attended him.

But, my Lords, there is a Matter, which we shall offer in Evidence, that entirely destroys this Evidence of my Lord Bishop's being so ill, that he could not move Hand or Foot, and of his not being in a Capacity of dictating Letters: that he did actually send a Letter the 21st of *April* to a Person in Town; and this very *Grant*, that hath given this Account to your Lordships, brought up the Letter to Town on the 21st of *April*. We have this to give your Lordships in Evidence; then what is the Evidence of all those Servants, who swear that it is impossible these Letters should be writ on the 20th of *April*, and that no body was admitted to come to him in order to write these Letters?

My Lords, as to the Evidence that hath been given, in relation to *Kelly's* Hand-writing, they have called Witnesses to disprove the Evidence on our Side, who, looking upon the Letter of the 20th of *August*, swear they do not believe it to be *Kelly's* Hand-writing. Our Witnesses do believe it; their Witnesses do not believe it, to be his Hand-writing, and say that it is not like it.

There are several Letters shown them, tho in a less Hand, that are agreed to be *Kelly's* Hand-writing; and your Lordships may judge, by looking on them, whether they are not of the same Hand with the Letter of the 20th of *August*; tho the Character is something less, we humbly apprehend they will appear so to be. Besides, there are those Circumstances relating to the Hand-writing of Mr. *Kelly*, that put it beyond all Dispute that it is his Hand, and that is the Answers he hath received to those Letters which we charge to be written by him. We have traced him from Place to Place, where the Letters that came in answer to his Letters, were directed; to Mr. *Andrews* at the *Dog and Duck*, there *Kelly* employ'd a Person to take them up, and they were deliver'd to him; and at *Burton's* Coffee-House *Kelly* took up the Letters that were directed thither, in answer to those Letters that were of his Hand-writing: So there is not only the Evidence of Witnesses, that knew his Hand, and believe it to be his Hand, but here is the Answers to them actually taken up by *Kelly* himself: and that we humbly apprehend is so strong an Evidence, joined with the other, that, when one or two Witnesses come and say they do not believe it to be his Hand-writing, their Testimony shall not overthrow it.

My Lords, there is another Piece of Evidence given by them, relating to the Letters of the 20th of *April*, which were inclosed in a Packet sent to *Bologne*; the Packet is directed to Mr. *Alexander Gordon* Banker, at *Bologne*; they have produced a Certificate from *Bologne* upon Oath, wherein it is said, that he is no Banker, and denies that he received any Packet from *Kelly*, or that he knew him: This is a Certificate, and proved by a Person who believes it to be so. Your Lordships will please to observe what this Paper is, and that it is brought here by a Person that knows nothing of it's being sworn, but says, he is used to Transactions of this kind, and he believes it to be a Certificate from *Bologne*.

My Lords, we shall produce a Gentleman, who was at *Bologne* at the time that the printed Report and Appendix of the House of Commons came there, and he was at Mr. *Gordon's* House, when they were discoursing about this Mat-

ter; and what they then said, we humbly submit will be believed; for what they then said was spoken as of an indifferent thing, and they did not then see it could be of any Consequence to disguise the Truth. Mr. *William Gordon* the Father said, that he was at *Paris*, when this Packet is supposed to have come; but Mr. *Alexander Gordon* the Son, own'd that he was at Home, and that this Packet came to him, but, said he, what was in it I know not, but I delivered it as is mentioned in the *Appendix*.

My Lords, there is another Piece of Evidence they have given, with relation to *James Talbot*, to whom the Packet was delivered at *Bologne*. Here is a Witness produced to prove that he was in Town the 29th of *April* 1722. and he could not be mistaken, because he had paid him Money, and he had entred it in his Book. The Evidence goes no farther than to prove, that one *James Talbot*, that was a tall black Man, was then in Town; but it doth not appear that this was the Person mentioned to have taken this Packet at *Bologne*, and carry'd it to *Paris*; so that their Proof, as to this Matter, is insufficient.

But we shall shew your Lordships, from an Account we have here from Mr. *Crawford*, his Majesty's Resident at *Paris*, that this *James Talbot* came to *Paris* that very Day, as he is mentioned to have brought those Letters to *Paris*, and was actually there at that time; and that we humbly apprehend will be a full Answer to them, and take away any ground of Supposition, that the Evidence they have given concerning *James Talbot*, can be apply'd to that *James Talbot* who received the Packet at *Bologne*.

As to the Evidence relating to Mr. *Kelly's* being in Town the 20th of *April*, we humbly apprehend from what hath been said, it is not material whether he was there or not; but they have not proved it, for Mrs. *Kilburne* and her Maid, the two Witnesses produced by them for this Purpose, say, that he came to Mrs. *Kilburne's* House the latter end of *April*, they believe the 20th, but they are not positive as to the Day. If he had been at Mrs. *Kilburne's* the 20th of *April*, it is no Answer at all to our Evidence, and the strong Circumstances there are to induce a Belief, that the Letters might be dated at another time than really they were written.

My Lords, another Evidence is Mr. *Pope*, a Gentleman of Learning, with whom my Lord Bishop of *Rocheſter* used to converse; and he gives you an Account that he knew nothing of this Conspiracy, that the Bishop never open'd his Mouth to him about it, nor acquainted him with it, that he was frequently with him, and their Discourse was only about Matters of Literature.

No doubt my Lord Bishop hath conversed with Persons on different Subjects, to whom he would communicate nothing of an Affair of this Nature.

My Lords, upon the whole Matter we must submit it to your Lordships, whether we have not made out the Charge against my Lord Bishop of *Rocheſter* to your Lordships Satisfaction, if not by legal Evidence, yet by Evidence that will satisfy and convince any Person that will consider it.

My Lords, a great deal of Regard is due to the Character and Function of the Reverend Prelate at the Bar; but if my Lord Bishop of *Rocheſter* hath departed from his Character and Function, and hath gone and engaged in a traiterous Conspiracy, and been guilty of Treason towards his King, and Perjury towards his God, we humbly apprehend, if this be proved, that his Character and Function are so far from being a Mitigation, that they are a great Aggravation of his Crime. We shall submit it to your Lordships to do, what your Lordships think is consistent with Justice and Equity.

Mr.

**Mr. Wearg's REPLY to the DEFENCE made
by the late Bishop of Rochester, and his
Counsel.**

MY LORDS,

IT must be admitted, that the Reverend Prelate at the Bar, has made his Defence with the utmost force and beauty of Eloquence.

Was I capable of answering it in the like manner, which I own I am not, yet I should not think my self at liberty to do it, under the present Circumstances.

For, tho' it may be excusable, in a Person upon his Defence, to make use of that powerful Instrument of Error and Deceit, which always imposes upon the Reason, and misguides the Judgment in proportion as it affects the Passions; yet, I can't think the same Methods justifiable in a Person employ'd to carry on the Prosecution.

I shall therefore examine the Force of what has been offer'd on behalf of the Reverend Prelate; stripp'd of the Ornaments and Colours of Rhetorick.

I shall, in the first place, consider that Catalogue of Hardships, which his Lordship has complain'd of.

1. The first Complaint was that of Severities and Indignities offer'd him during his Confinement; but the subject of this Complaint not arising from any of the Proceedings before your Lordships, I can give it no other answer, than by saying, that I am very credibly inform'd 'tis a Complaint without foundation.

2. Reading Extracts of Letters was the next Hardship complain'd of by his Lordship, and represented as if they were read as Evidence against him; when it was declared by the Counsel for the Bill, that they were only read upon the general part of the Bill, and did not affect his Lordship.

3. The third Hardship was excusing the Decyphers from answering such Questions proposed by his Lordship, as tended to a Discovery of their Art; That is, in other words, refusing to do an act, which must prejudice another Person, and could be of no service to his Lordship; for the Truth of what they testified, depended upon the Skill and Integrity of the Decyphers, and not upon the Method of coming at that Skill, which they could not disclose in so publick a manner, without doing a manifest Prejudice to themselves, which no Witness is ever compell'd to do.

4. The next Hardship is of the like nature, the not suffering the Clerks of the Post-Office to be examin'd, as to the Method and Authority by which they open'd Letters; By which they might have been subjected to the severe Penalties of the Statute 9 Anne, if they had not exactly pursued the Methods prescribed by that Statute. But his Lordship's Innocence could not possibly have been manifested by it; for are the Letters less criminal, if the Person who stopped them did not punctually pursue the Directions of that Statute? It would be thought a strange Defence in a common Offender, if instead of proving his Innocence at his Tryal, he should object that he was taken without a proper Warrant; which, if true, don't make him the less criminal.

5. The fifth Hardship was refusing to let Mr. Lewis declare any thing that came to his knowledge by his being employ'd in the Secretaries Office some years ago:

This

This Hardship could be added only to fill up the Catalogue of Complaints, since notwithstanding your Lordships Order Mr. *Lewis* did declare what he was call'd for, tho he afterwards own'd that he came to the knowledge of it by being employ'd in that Office.

6. The sixth Hardship was in reading an Examination not dated, signed, or sworn: But I apprehend the Counsel for the Bill have more reason to complain of Hardships of this sort, in reading Papers on behalf of his Lordship, as Examinations sign'd and sworn, without ever proving that they were sign'd or sworn to, or that any such Persons were ever examin'd; whereas the Examination hinted at in the Bishop's Complaint, was read as an Examination, or rather Confession of a Person since dead, not sign'd nor sworn to, and fairly left to your Lordships to have such weight as the nature of the Evidence deserved.

7. The next Hardship, *viz.* that of reading Letters wrote by another Person, without proof that they were wrote with the Prelate's Privy, is begging the Question upon the whole Proceeding; For whether there was proof of their being wrote with his Privy or not, is the Subject of the present Inquiry.

8, 9. The two last Hardships complain'd of, seem to be calculated for Persons without doors, who are Strangers to what pass'd at your Lordships Bar, That he was denied a Copy of the Letters in Cypher until the Tryal was so far advanced that he could not make the proper use of those Copies. Will any one who reads this Complaint in his Lordship's Speech imagine, that after he had a Copy of those Letters, he had twice as much time for his Décyphers to peruse them as he himself desired?

Or will a Person who shall read the next Complaint in his Lordship's Speech, That he was refused to read any of the Papers contain'd in the Trunk that had not been read by the Counsel for the Bill, ever be persuaded that his Lordship read the three first Examinations of *Neynoe*, that had not been read by the Counsel, the Papers taken in *Neynoe's* Pocket, the Certificate of the Surgeon return'd by Mr. *Crawford*, neither of which had been read by the Counsel for the Bill; That his Lordship was expressly told, he was at liberty to read any Paper in the Trunk he should think necessary to his Defence; and was only refused reading one Paper, because he own'd it was for no other purpose, but to raise an Objection to a Matter which had not been insisted on by the Counsel for the Bill, that he might answer the Objection which he himself should raise?

These things will seem incredible to one who shall read this Catalogue of Complaints in his Lordship's Speech; and yet these are some of those Complaints, which with the Assistance of a warm and masterly Style, drew Tears from some of your Lordships Eyes; —

But when stripp'd of that false Beauty, and examined by the sure and unerring Rules of Reason, appear to be without foundation; and to have been made without that strict regard to Truth, which, I presume by some part of his Lordship's Speech, he would be thought always to have.

From these Complaints his Lordship proceeds to support some of the Objections taken by his Counsel to the Bill.

And one of the first Objections is of the same nature with some of the Hardships that have been complain'd of, that is, it might be an Objection did it not want the foundation of Truth.

The Objection I mean is, that it is a Bill *ex post facto*; your Lordships have heard a great deal said upon the Hardships of Bills *ex post facto*;

We have been called upon to shew against what Law he has offended; it has been said, If he has not offended against any Law, will you make a Law in his Case, which will not be a Law in the Case of any other Man? This is a surprising Objection;

The Notion I always had of a Law *ex post facto* was, where a Fact was made criminal by a Law, which was not so at the time that Fact was committed.

But is that the present Case? Was it no Offence, before this Bill was brought in, to correspond with the Pretender and his Agents, in order to subvert our Constitution?

Are we to be call'd upon to shew against what Law this is an Offence?

Or to have a Complaint made, that in punishing a Man for such an Offence, you are making a Law in his Case, that will not be a Law in the Case of any other Person?

I hope it will be a Law in the Case of every Man that equally deserves it.

But his Lordship is sensible of this Answer, and therefore gives it a very artful Turn, by applying it, not to the Fact, but to the Evidence: His Lordship seems to argue, that accumulative Evidence is as unreasonable as accumulative Treason; and objects, that Proofs which communicate Light and Strength to each other, have only the Formality, without the Force of Evidence.

This Objection is destructive of all Proof that is not Mathematical, for all other Proof must necessarily be what he calls accumulative.

That is, it consists of a variety of Facts and Circumstances laid together, sufficient to induce a Belief, which any of them singly would not do. This is the very Principle upon which the Trial of every Matter of Fact, not capable of a Demonstration, does and must proceed.

Your Lordships in the next place have heard a string of Objections, that have been repeated against each of the Bills.

That a Subject of *England* ought to be tried according to the Laws of *England* and *Magna Charta*:

To be convicted by legal Evidence:

And that a Distinction between Legal and Parliamentary Evidence is absurd.

All these Positions I agree to;

But at the same time I must affirm, that this is a Trial agreeable to the Laws of *England* and *Magna Charta*; and that a Proceeding of this Nature is as necessary a part of our Constitution, as the Establishment of the ordinary Courts in *Westminster-Hall*.

The difference between Parliamentary and Legal Evidence, taken in the general Sense of the word Legal, is improper.

And I affirm, the Evidence which has been offered in support of this Bill, is legal Evidence.

What is legal Evidence, depends upon the Nature of the Inquiry, and the Judicature before which the Inquiry is made.

Depositions in writing are not legal Evidence in a Court of Law, but they are legal Evidence in a Court of Equity.

Upon an Indictment for Felony, or any other Misdemeanour, one single positive Witness, or Circumstances only without any positive Witness to the Fact, is legal Evidence.

But upon an Indictment for Treason, the Law requiring two Witnesses in the Courts below, one Witness, or Circumstances, is not legal Evidence.

In Parliamentary Enquiries, which are excepted out of that Act and not restrained by any other, every thing is legal Evidence which may properly tend to a discovery of the Truth.

I can't think my self at liberty at this time of day to mention what fell from the other side against the Power of the Parliament in general, and the rather because the next Objection which they relied upon was introduced with an admission of that Power.

But they say it ought never to be exercised but in Cases of Necessity; and instance particularly in the Bill against the *South-Sea* Directors, as a Case of that Nature. Is there any Comparison between the Offence of those Men, and of one who has endeavoured to subvert our whole Constitution, to destroy our Religion, our Liberty, and every thing that is valuable?

When we reflect that these Endeavours have been constantly carrying on ever since the happy Establishment of the Protestant Succession;

That the many Discoveries of their Plots, the many Examples of publick Justice, have had no other Effect than to make them more subtle and cunning how to avoid the common Forms of the Law;

These Reflections shew the Necessity of such a Proceeding, to convince the World, according to your Lordships Report, that as Artifice and Disguise don't lessen the Danger to the Publick, nor mitigate the Guilt of the Offender, so neither ought they to protect him from Punishment.

The next Objection was addressed chiefly to one part of your Lordships, who were told that no civil Power upon Earth could deprive a Bishop of the Exercise of his holy Function, but that must be done by another Judicature; and therefore it was observ'd by one of the Counsel, that wherever Issue is join'd in the Common Law Courts, whether Bishop or no, the Court where such Issue is depending must write to the Metropolitan to try it according to the Law of the Church.

Whether an Act of Parliament can deprive a Bishop so as to make the Acts done by him afterwards invalid, is a Controversy not proper at this time; but it will be admitted on all hands, that an Act of Parliament may restrain a Bishop from the Exercise of his Function within any part of this Kingdom, so as to make the Exercise of it Criminal in him, or in any that assists him. And I believe if this Bill should pass into a Law, and there should be a question whether his Lordship was afterwards Bishop of *Rocheſter*, the Courts of Law, upon producing the Act of Parliament, would hardly think it necessary to trouble the Metropolitan.

His Lordship has been pleased to say, that this is the first Instance where a Member of this House has been judged in another.

I wonder that his Lordship, who is so great a Master of our *English* Constitution, should have forgot the Case of one of his Predecessors in the See of *Rocheſter* in the Reign of *Henry VIII.* against whom a Bill was brought in the House of Commons inflicting severe Pains and Penalties, which passed in that House, and afterwards received the Approbation of this, and the Royal Assent.

They have closed their Objections to the Bill, with a very pathetick Admonition against the Consequences of it.

They say the wisest Man can't foresee, nor the most innocent Man declare himself safe from the Consequences of this Bill.

That a wise Man should not be able to foresee what will happen hereafter, is not very strange;

But he must be a very wise Man indeed, in my poor Opinion, who can foresee any danger to Innocence from the Proceedings upon this Bill. Your Lordships have attended with the utmost Patience, for seven Days together, to the Proofs for and against this Bill, and have given the Person accused all the Opportunities, afforded him all the Assistance possible, to make out his Innocence.

And whoever shall use this Precedent as a handle for Oppression and Injustice; would certainly be guilty of the same Oppression and Injustice without this Precedent.

The next Part of their Defence, consisted in Observations upon the Evidence for the Bill.

They raise great Triumph from *Neynoe's* Examination, which they would represent as the Foundation of the whole Charge.

It is far from being the Foundation of the Charge, or offered as such by the Counsel for the Bill.

But if it was, they have been so far from weakening, that they have added strength to that Foundation.

As to the Inconsistencies in it, they are not *Neynoe's*, but *Kelly's*. As to the Tale they have told, that at the very time when he was deluding a great Man with Confessions, either to get Money out of him, or to find an opportunity of making his Escape, he should declare to *Skeen* and to *Steward* that what he had confessed was false; I say, as this is improbable in it self, so it appears by our Evidence to be a mere Fiction of their own, without any possibility of being true.

It appears to be an Attempt, by a parcel of desperate People engaged in the same Interest, to weaken *Neynoe's* Evidence, whom they looked upon as a Betrayer of their Cause and Party.

From the Evidence of *Neynoe* they proceed to the other Evidence.

And here they tell your Lordships that we have supported the Bill by Innuendo's, Arbitrary and Invidious Interpretations; that when a Woman is named, it means a Man; that two different Names signify the same Person; that Books of Account, and mercantile Terms, by a new kind of Metaphor, are taken in an ill Sense; and all this assisted with the Whimsies and Conjectures of Decyphers.

These are pretty sounding Expressions; but, when consider'd, are nothing but Sound.

Is it an arbitrary Interpretation when a Letter says, I saw Mrs. *Illington*, He is in great Tribulation for poor *Harlequin*, but his Obligations are the same, which he desires may be made known, to apply this to a Man? When two Letters are wrote by the same Person, but sign'd by different Names, to apply those two Names to that Person?

When Letters give a Caution not to write any more till new Books of Account can be settled and sent over by safe Hands;

Because those who have got part, may, by the same means, have got the whole;

To

To express a doubt whether they have been betray'd by false Friends or an open Enemy?

To talk of having Wine, but wanting Barrels; of the absence of the King and Court, as affording a proper opportunity of sending over and selling their Wine:

A Man must have laid aside his Reason, that can think this the Language of Persons really dealing in a mercantile way: 'Tis the plain and common Cant of a treasonable Correspondence.

They next object to the unreasonableness of applying the Circumstances which relate to *Jones* and *Illington*, to the Bishop of *Rochester*.

Was no body else besides the Bishop out of Town? Was he the only Man that had the Gout, or who lost his Lady at that time?

Were these Questions to be asked singly, they might be answer'd, that there were other Persons in the like Circumstances.

But then the Answers would be nothing to the purpose.

The only Question applicable to the present Case would be, Is there no other Person who was in Town on the seventh of *May*, out of Town on the tenth and fourteenth, in Town on the fifteenth, whose Wife died the Week before the thirtieth of *April*, he himself then ill of the Gout, to whom a Dog was sent from *France* of the name of *Harlequin*, that broke its Leg, and was brought to Mrs. *Barnes* by Mr. *Kelly* in order to be cured?

These are the Circumstances of *Jones* and *Illington*, and they are every one prov'd true of the Bishop of *Rochester*, and I believe your Lordships can hardly think they are so of any other Person.

They said they should falsify several of these Facts; but they have only said it.

In the Papers they have produc'd from the Surgeon concerning the Dog, he contradicts himself.

In the first he says he gave Mr. *Kelly* a Dog for his own use, to dispose of as he pleased;

In the second he says he gave it for Mrs. *Barnes*:

But Mrs. *Barnes* tells you, that the Dog design'd for the Bishop was in her Custody, when the other given by the Surgeon was expected over.

Their Attempt to disprove the Circumstances of being in Town, has met with as little Success.

In a Letter of the seventh of *May*, 'tis said Mr. *Illington* is come to Town for a day only:

We shewed that the Bishop was in Town upon that day; they answer us by saying, he stay'd in Town two Days after.

Does this disprove his being in Town upon the seventh? or does it weaken the proof of his being then in Town, because he alter'd his mind, and staid two Days longer than perhaps he at first intended?

This is the only Attempt they made to disprove any of the Circumstances relating to Mr. *Jones* and *Illington*. As to the other Instances which they pretend to disprove, they relate to *Weston* and *Rig*, and were not mention'd by the Counsel for the Bill.

They next object to the Method of proving the Similitude of Hands, and observe that the original Letter prov'd to be Mr. *Kelly's*, and the three Letters applied to the Bishop of *Rochester*, are dated at four Months distance; and how is it possible that the Clerks of the Post-Office should be able to swear upon their Memories that they are of the same Hand-writing?

This is not a fair Representation of the Evidence, For the Clerks told your Lordships that there was not any one Post during all that time, which did not bring some Letter in the same Hand, all which they copied, and had by that means contracted a perfect Idea of the Hand; so that they did not swear from Memory, but from a Knowledge gained by Experience, and many constant repeated Observations upon the same Hand.

There have been some other Objections made, that are scarce worth taking notice of.

'Tis said Mrs. *Illington* is in great Tribulation for poor *Harlequin*, which *Kelly* could never say of the Bishop of *Rochester*.

Surely there is nothing in this;

But an Expression that might be used of a Man of the gravest Character, in a Letter of this sort, to the Author of such a Present.

Mrs.

Mrs. *Illington* is mentioned eleven Days after the Bishop's Lady was dead. This is the Instance where 'tis said Mrs. *Illington* is in great Tribulation for poor *Harlequin*, but his Obligation is the same, which he desires may be made known.

That *Jones* is mentioned in other Cyphers for other Persons, as in one for the Duke of *Norfolk*, in *Plunket's* for a different Person.

But does it therefore follow that in *Kelly's* he can't mean the Bishop of *Rochester*? It certainly does not.

And they seem to be convinced that the Bishop is too well described, in this Correspondence, under the Names of *Jones* and *Illington*, to doubt whether he is meant by them.

And therefore they endeavour to give it another Turn, by saying this may be a malicious Contrivance of some Persons, who have inform'd themselves of his Lordship's Motions, and the Circumstances of himself and Family: And to make this the more probable, they say that *Jones* and *Illington* are the only Persons mentioned in this Correspondence of Mr. *Kelly's* with Circumstances of this Nature.

One would not imagine the Persons who made this Objection, had so often heard the Letters read.

E. 41. 'Tis said *Hore* is laid up with his old Distemper, *Hobbert* is pretty well recovered..

E. 45. Mr. *Hore* is laid up, and so is *Jemison* with the Gout.

E. 49. *Rep.* is said to be in the Country.

E. 59. *Ho.* and *Den.* are said to be gone into the Country.

E. 62. *Nic. W.* is now in Town, he is well as to Health.

E. 64. *Trotter* is said to be out of Town the next Morning.

E. 69. *Den.* is said to come to Town, *Rep.* and *Ho.* to be in the Country.

E. 73. *C. Saunders* is well, and with a Friend in the Country.

These are all Instances where the same Circumstances are mentioned of other Persons, that are mentioned of *Jones* and *Illington*.

If *Jones* and *Illington* are ofteneft mentioned, it is because he was the principal Person in this Correspondence.

But this malicious Contrivance must be carry'd on by Mr. *Kelly*: for

It has been proved that the Letters were wrote in his Hand, that the Answers were address'd according to his Directions;

That he received the Letters so directed.

I believe your Lordships have no Suspicion that Mr. *Kelly* bore any ill Will towards the Bishop;

I am sure there has been no Proof of it, nor of any malicious Contrivance against him.

But, my Lords, this is the common trite Excuse of every petty Offender.

Your Lordships can scarce read a Tryal, where the Defendant don't complain that it is all a malicious Contrivance of his Enemies.

I heard this very thing warmly insisted upon a few Terms ago, at another Bar, and with as much Proof, by a Person concern'd in a Part of this Conspiracy, who has since been attainted and own'd his Guilt.

But we have gone still further, we have shewn that *Kelly* was an Acquaintance of the Bishop of *Rochester's*.

Which is indeed acknowledged, without any Satisfactory Account given for what Purpose his Lordship should contract an Acquaintance with a young Fellow that has deserted his Orders, and is a profess'd Nonjuror.

Your Lordships, I presume, from the Behaviour of Mr. *Kelly*, can hardly be persuaded that he had no other Employment under the Bishop than to furnish him with Beaver-Stockings, which the Bishop owns to have received from him as a Present.

But we have proved by the strongest Evidence that can be, by a Letter under his Lordship's Seal, and I may venture to say (from the Observations that have been made from the Letter it self) under his Hand, that *Johnson*, i. e. *Kelly*, is the Person in whose Hand the Bishop returns his Answers. No Account is given of this Letter, by whom it was wrote, nor to whom, nor how it came among his Lordship's Papers.

All that is said in answer to it is, that 'tis possible Seals may be counterfeited, or there may be several Impressions of the same Seal: but is there any Proof of this?

It

It appears that the Impression on the first Letter was broke when seized, that it was in the hands of the Committee of the House of Commons before the second Letter was taken, which makes it impossible to imagine an Impression should be taken off the first to put upon the second.

But his Lordship is pleased to ask, Is it agreeable to the cunning with which he is charged, to keep such a Letter by him on purpose, as it were, to furnish his Adversaries with Evidence?

No, my Lords, neither do I imagine his Lordship knew he had it by him.

It was found amongst his Papers, and, no doubt of it, was left there accidentally, and 'tis by such little Accidents that the most Cunning Men are detected: there is no danger of their committing greater Oversights.

His Lordship is pleased to observe: that at first the House of Commons represented this Letter as a Letter wrote to him, but now 'tis discovered to be wrote by him: It is so, and very plainly, and his Lordship may thank himself for the Discovery; and the not discovering it sooner is surely no Objection to the Truth of it when discovered.

It may be urged, and has been insinuated, that if Mr. *Johnson* is the Person in whose hand the Bishop returns his Answers, yet how does it appear that these particular Letters which are applyed to the Bishop were wrote by his Directions?

If it appears that *Johnson* is the Person in whose Hand he writes, and that these Letters are of the Hand-writing of *Johnson*, signed by that Name which denotes the Bishop in the Correspondence, this will be thought a reasonable proof that they were wrote with his privity.

But they said they should prove it impossible that these three Letters should be wrote with the privity of the Bishop; for they bear Date the twentieth of *April*, whereas the Bishop came to Town the eleventh, went to *Bromley* the twelfth, and within two or three Days after was taken so ill with the Gout, that he had neither the use of his Hands or Feet, and had a Servant always attending him, who will prove that no Stranger came near him all that time.

If this had been made out, it would not be a proof that the Letters were not dictated by him; for both *Kelly* and the Bishop were in Town upon the eleventh and twelfth, and the Bishop was not confined at *Bromley* upon the thirteenth and fourteenth, when Mr. *Kelly* was out of Town and probably at *Bromley*. And tho' the Letters bear Date upon the twentieth of *April*, yet 'tis not to be imagined, that they were wrote upon that Day; for it requires a good deal of time to reduce three Letters into Cyphers; and the Method generally used, where Letters are to be sent in Cyphers, is, to write them in common Hand first, and then reduce them to Cyphers after; so that its probable the Substance of these Letters was dictated many Days before they were perfected and sent.

But the Evidence given by the Bishop's Servants is not to be regarded.

The first Servant when he had sworn what he thought was material for the Bishop, being press'd by a noble Lord with a Question relating to the Letter directed to *Dubois*, refused to give any Answer; till the Bishop publicly gave him Leave; tho' he was sworn to speak the whole Truth; which shews too great an Attachment to his Master's Interest to deserve much Credit.

He and the second Witness did admit, that the Apothecary or the Minister of the Parish might be with the Bishop without their Knowledge; and if so, why not Mr. *Kelly*, whose Visits required more Secrecy than either of the others.

And I must here observe, that what the Reverend Prelate insisted upon to add Credit to the Evidence of these Witnesses, is the greatest Objection to their Testimony imaginable.

They tell your Lordships, that tho' they were with the Bishop in the Tower, yet he never once spoke to them concerning the Matter they had given in Evidence, till they themselves recollected it upon reading the Report, and finding that the Bishop was charged with being the Author of three Letters, dated the twentieth of *April*, they immediately recollect that the Bishop was ill at that time, and they constantly about him. This seems to be a Story scarce credible.

That the Bishop himself who was so nearly concerned, should not upon reading the Report recollect the Circumstances he was under at the time when those Letters bore Date, if the Truth was as they would represent it; but that his Servants should first recollect this, and suggest it to their Master.

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Or if the Bishop did recollect it, 'tis strange he should not mention it to those Servants, who were present with him in the Tower, and the only Persons, who as they say, were capable of clearing his Innocence.

This had been very natural, and proper under his Circumstances; and his not speaking to them first, could hardly proceed from an unreasonable Scruple, lest he should be suspected of laying a byass upon them; since his Lordship has, after he knew they were to be Witnesses, given each of them a place under him as Dean of *Westminster*.

The rest of the Servants that were called, tho' they contradict the first, by admitting that two other Gentlemen were at the Bishop's at *Bromley*, during the time in Questions; yet they plainly shew a greater regard for their Master's Interest than for Truth; for the one of them was but the Halper in the Stable, and another the Nurse that attended his Lady in her Elines, yet they take upon them to swear that they verily believe no Stranger could be with their Master in private, but they should have known of it, and that they never knew of Mr. Kelly's being there.

Every Body's Observation must suggest to them that such a Belief must be without Foundation.

The next Arguments used on behalf of the Reverend Prelate at the Bar, were raised from his unambitious resigned Temper of Mind, and from the Style of the Letters laid to his Charge; That its not probable he should use so indecent an Expression of Persons he was concerned with, as to call them *pretending unsupported People*.

What Weight there is in these Arguments I must submit to your Lordships, who are much better acquainted with his Temper and Style than I can pretend to be.

The last thing pressed by the Reverend Prelate is a solemn Protestation, I cannot say of Innocence, because it seems to me to be conceived in such Terms as not to contradict any part of the Charge insisted upon by the Counsel for the Bill.

It is chiefly calculated to answer some particular Circumstances of Times, without any denial of the general Charge, or the least Declaration of Affection or Loyalty towards his present Majesty.

But if his Protestations amounted to a direct and positive denial of the Charge, they ought not to have any Weight with your Lordships, since this is a Defence equally in the Power of the most Guilty as well as the Innocent: a little Proof is better than many Protestations.

And I can't help observing upon this Head, and I hope his Lordship won't impute this Observation to Ill Nature but a Sence of my Duty, which obliges me to make all proper Observations, That it appears his Lordship has not always that strict regard to Truth, which he ought to have, by the Papers taken upon his Servant at the Tower.

The nature of the Punishment has been much talked of in the Course of these Proceedings, and great Lamentations made upon it, but surely without any Reason.

For this Argument supposes the Party Guilty of the Charge, or else it's ridiculous to object to the Severity of the Punishment.

And I may venture to affirm this is the mildest Punishment that ever was inflicted for such an Offence.

His Life is not touched, his Liberty nor Property affected, he is only expelled the Society whose Government he disapproves and has endeavoured to subvert, and deprived of the publick Employment which that Government had intrusted him with: The Enjoyment of his Life, his private Estate, and his Liberty under any other Government that may be more agreeable, is allowed him.

This is scarce to be called a Punishment, being nothing more than what was absolutely necessary for the publick Security.

The Commons of *Great Britain* have done their part towards providing this Security, and I don't doubt but it will meet with the Concurrence of your Lordships.

F I N I S.